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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 49A05-0806-JV-320

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0710-JC-44613 and 49D09-0710-JC-44614

January 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

B.C. (Mother) appeals the juvenile court's order determining that her children, B.C. and H.C., are children in need of services (CHINS). Mother presents two issues for our review:

1. Did the trial court abuse its discretion in admitting over Mother's objection H.C.'s medical records?
2. Is the evidence sufficient to support the juvenile court's determination that B.C. and H.C. were CHINS pursuant to Ind. Code Ann. § 31-34-1-1 (West, Premise through 2008 2nd Regular Sess.)?

We affirm.

Mother has three children, only two of whom are involved in the instant appeal: B.C., born March 16, 2000, and H.C., born September 21, 2007.¹ The Marion County Department of Child Services (MCDCS) became involved with Mother most recently in October 2007² when the MCDCS received a report that H.C. was born at Methodist Hospital and that her meconium drug screen was positive for marijuana. Family Case Manager Valerie Wilson conducted an investigation into the allegation. Wilson first went to the hospital and interviewed Mother and a hospital social worker. Mother reported to Wilson that she did not find out that she was pregnant until she was twenty-six and a half weeks along in her pregnancy. Mother admitted that she smoked marijuana while pregnant, but claimed that she "immediately" stopped smoking marijuana when she found out she was pregnant.³ *Transcript* at 19. Mother also admitted that she began smoking marijuana again within one

¹ Mother's third (and oldest) child is in the custody of his biological father.

² There is some indication that the MCDCS may have been involved with Mother on a prior occasion, but no details were provided in the record before us.

³ A hospital social worker informed Wilson that Mother's drug screens came back negative after she found out she was pregnant.

week after H.C.'s birth. Mother informed Wilson that she smoked marijuana while B.C. was asleep or at school.

As part of her investigation, Wilson went to assess the living conditions of Mother's home. Wilson noted that there was food in the home, that all of the utilities worked, and that the home was clean. Wilson was concerned, however, about the living arrangements for Mother, B.C., and H.C., in that they would be living in a one bedroom apartment with Mother's two sisters and three additional children. There was a queen-size bed in the bedroom in which the four older children slept. Mother's sisters slept on a couch and a pallet on the floor. Wilson also observed that there was a baby bed for H.C., which had been provided by the hospital.⁴ The MCDCS ultimately determined the Mother's living arrangements were "not appropriate" in light of the size of the apartment and the number of people living there. *Id.* at 17. Given the living arrangements and the fact that H.C. was born marijuana positive ("the number one issue" according to Wilson), the MCDCS determined that it was appropriate to file a CHINS petition. *Id.*

In the CHINS petition filed October 19, 2007, the MCDCS alleged as follows:

On or about October 17, 2007, the [MCDCS] determined, by its Family Casemanager (FCM) Valerie Wilson, these children to be children in need of services because their mother, [B.C.], uses marijuana and [H.C.] tested positive for THC at the time of her birth. The child was born several weeks premature and has been hospitalized in the NICU since her birth. In addition, [B.C.] lack [sic] adequate and necessary housing for herself and her two children. At the time of FCM Wilson's investigation, [B.C.]resided in a one bedroom apartment with two other adult[s], two relatives, and three children.

⁴ The baby bed was never used because when H.C. was released from the hospital after spending several weeks in the NICU, she was placed in therapeutic foster care.

There is not adequate space in the home for [B.C.] and her two children. At this time, the children and family are in need of services.

Appellant's Appendix at 45. A fact-finding hearing on the CHINS petition commenced on February 15, 2008. At the time of the fact-finding hearing, Mother was living with her boyfriend⁵ and his mother.⁶ Family Case Manager Tim Beals, who was transferred to oversee Mother's case in November 2007, testified that he had not assessed Mother's current living arrangement, but noted that Mother's move was recent and that he believed her living arrangement needed to be more stable. Mother admitted that she planned on moving again as soon as she could "get [her] money stuff together." *Transcript* at 35. Beals also expressed concern about Mother's boyfriend's drug usage as well as Mother's own drug usage.

During the fact-finding hearing, the trial court was made aware that Mother had obtained a job and had begun working three weeks prior to the fact-finding hearing. The trial court was also informed that Mother had missed at least three visits with her children, claiming a lack of transportation. One week prior to the hearing, the MCDCS referred Mother to an intensive outpatient treatment program with the Salvation Army. Mother indicated her desire to start the classes.

On April 4, 2008, the juvenile court issued its order determining B.C. and H.C. to be CHINS. In support of its determination, the trial court made the following conclusions:

1. [B.C.] and [H.C.] are victims of neglect under I.C. 31-34-1.
2. Mother endangered the children by using illegal drugs and by failing to provide them with a safe and stable home environment.

⁵ Mother's boyfriend is not the biological father of either B.C. or H.C., who have different, unknown fathers.

⁶ The house had three bedrooms and belonged to Mother's boyfriend's mother.

3. After [H.C.] was born marijuana positive, mother continued to use marijuana.
4. Mother used marijuana while pregnant with [H.C.].
5. Mother has not yet successfully completed a drug treatment program to remedy the reason for MCDCS involvement and has not yet demonstrated an ability to provide a safe and stable home environment for her children.
6. Mother's living situation, both at the time of [H.C.]'s birth, and at the time of the factfinding [sic] is inappropriate for the above named children.
7. Mother has failed to sufficiently address her drug usage.
8. The above named children need care and treatment that will not be provided without the coercive intervention of the Court.
9. Respondent mother, [B.C.] needs services to assist her in appropriately parenting her children.
10. [B.C.] and [H.C.] are adjudicated to be children in need of services under I.C. 31-34-1[.]

Appellant's Appendix at 98.

1.

Mother argues that the trial court abused its discretion in admitting over her objection medical records pertaining to H.C.'s birth and subsequent hospital stay. Specifically, Mother asserts that the trial court could not rely on the social worker's notes that were included in H.C.'s medical records⁷ or the test results indicating that H.C.'s meconium drug screen was positive for marijuana. Mother challenges the admission of the medical records arguing that the records contain hearsay, that there was no foundation laid for their admission, and that they were not self-authenticating or properly certified.

⁷ The social worker's notes refer to H.C.'s "positive meconium for marijuana", *Exhibits* at 79, and "positive meconium result for THC". *Id.* at 130. The social worker's notes also detail Mother's use of marijuana prior to becoming aware that she was twenty-six and one-half weeks pregnant as reported by Mother.

We review a trial court's admission of evidence for an abuse of discretion. *In re Paternity of H.R.M.*, 864 N.E.2d 442 (Ind. Ct. App. 2007). An abuse of discretion will be found only when the decision is clearly erroneous or against the logic and effect of the facts and circumstances before the trial court. *Id.* "The fact that evidence was erroneously admitted does not automatically require reversal, and we will reverse only if we conclude the admission affected a party's substantial rights." *Id.* at 445-46.

Here, even assuming admission of H.C.'s medical records was in error, we conclude Mother has not established that such admission affected her substantial rights. Mother's challenge to the admission of H.C.'s medical records concerns the evidence that H.C. was born marijuana positive. Indeed, Mother challenges the trial court's findings in this regard.⁸ We note, however, that during the fact-finding hearing, Mother admitted to using marijuana while pregnant with H.C., that is, until such time when she discovered she was twenty-six and a half weeks into her pregnancy. Further, although Mother apparently stopped using marijuana when she learned that she was pregnant, she admitted that she began using marijuana again within a week after H.C.'s birth. Mother explained that she would use marijuana while B.C. was at school or asleep.

⁸ Mother challenges the trial court's findings number 11 and 12, in which the trial court found as follows:

11. According to certified medical records, [H.C.] tested positive for marijuana and opiates at birth.
12. Mother was given percocets [sic] on September 20, 2007 which would account for the positive test for opiates.

Appellant's Appendix at 97. These findings could only have been made with reference to H.C.'s medical records.

The trial court, while noting that H.C. tested positive for marijuana at birth, expressed concern over Mother's continued drug use since H.C.'s birth and her failure to successfully complete a drug treatment program. Mother's drug use in general was a primary concern for the court in determining B.C. and H.C. to be CHINS. Indeed, the trial court did not find that H.C. was a CHINS under the dictates of I.C. § 31-34-1-10 (West, Premise through 2008 2nd Regular Sess.), which provides that a child is a CHINS if the child is born with any amount, including a trace amount, of a controlled substance in the child's body.

In addition to Mother's admitted drug use, we note that the trial court also considered Mother's living arrangements in finding B.C. and H.C. to be CHINS. To be sure, the trial court specifically concluded that "Mother endangered the children by using illegal drugs and by failing to provide them with a safe and stable home environment." *Appellant's Appendix* at 98. Having reviewed the record, it is clear the trial court did not rely heavily upon H.C.'s positive meconium screen in determining B.C. and H.C. to be CHINS. Even without consideration of such fact, we are confident the trial court would have made the same determination. We therefore conclude that Mother has not established that admission of H.C.'s medical records, which contained the lab results indicating H.C.'s meconium tested positive for marijuana and the social worker's notes indicating the same, affected her substantial rights.

2.

Mother also argues that the evidence was insufficient to support the trial court's determination that B.C. and H.C. were CHINS. At the outset we note that the CHINS

statutes do not require that a court wait until a tragedy occurs to intervene. *Roark v. Roark*, 551 N.E.2d 865 (Ind. Ct. App. 1990). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* Further, as with parental rights terminations, the purpose of a CHINS adjudication is not to punish parents but to protect their children. *In re A.I.*, 825 N.E.2d 798 (Ind. Ct. App. 2005), *trans. denied*.

Because the trial court entered findings of fact and conclusions thereon, our standard of review is two-tiered. *In re V.C.*, 867 N.E.2d 167 (Ind. Ct. App. 2007). We first determine whether the evidence supports the findings, and then we determine whether the findings support the conclusions. *Id.* We will reverse only if the evidence does not support the findings or the findings do not support the judgment. *Id.* In our review, we consider only the evidence favorable to the trial court's judgment, and we do not reweigh the evidence or reassess the credibility of the witnesses. *Id.*

A child under eighteen years old is a CHINS if:

(1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that the child:

(A) is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

I.C. § 31-34-1-1. The MCDCS has the burden of proving by a preponderance of the evidence that the children are CHINS. *See* I.C. § 31-34-12-3 (West, Premise through 2008 2nd Regular Sess.).

Here, the record supports the trial court's determination that B.C. and H.C. are CHINS. The trial court concluded that "Mother endangered the children by using illegal drugs and by failing to provide them with a safe and stable home environment." *Appellant's Appendix* at 98. The trial court further concluded that Mother had failed to sufficiently address her drug problem and that Mother's living situation at the time of H.C.'s birth and at the time of the fact-finding hearing was inappropriate for the children. The record reveals that Mother admitted to using marijuana during her pregnancy and as soon as one week after H.C.'s birth, while H.C. was still in the NICU. Mother admitted that she would use marijuana while B.C. was at school or asleep. Thus, by Mother's own admission, she knowingly exposed B.C. to an environment of illegal drug use. Although the MCDCS had not offered services to Mother until a week prior to the hearing, neither did Mother seek services of her own volition to address her drug problem.

With regard to Mother's living arrangements, the record reveals that at the time of H.C.'s birth, Mother was living in a small, one-bedroom apartment with two other adults and three children. Although the home was clean and had utilities, the size of the apartment was inappropriate for the number of people. At the time of the fact-finding hearing, Mother had moved in with her boyfriend at her boyfriend's mother's home. While Mother claimed that her new living arrangement addressed the MCDCS's space concerns, the MCDCS found that

Mother's new living arrangement was not sufficiently stable. The MCDCS expressed concern about the fact that Mother's boyfriend and his mother were not biologically related to B.C. and H.C. Further, Mother expressed a desire to find a new place to live once she had the means to do so. Having reviewed the record, we conclude that the MCDCS established by a preponderance of the evidence that B.C. and H.C. were CHINS pursuant to I.C. § 31-34-1-1.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur